IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.2069 of 2020

Reserved on : December 23, 2020

Date of Decision : December 24, 2020

Kiran ....Petitioner

Versus

State of H.P. ....Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?

For the Petitioner : Ms Sheetal Vyas, Advocate, through Video Conferencing.

For the respondent-State : Mr. Raju Ram Rahi, Deputy Advocate General, through Video Conferencing.

Vivek Singh Thakur, Judge

Petitioner Kiran has approached this Court for releasing her on bail, in case FIR No.128 of 2020, dated 3.9.2020, registered under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act), in Police Station Damtal, District Kangra, Himachal Pradesh.

2. As per Status Report, filed on behalf of respondent-State, petitioner was apprehended from house of her brother, during search of the house on the basis of prior information. Brother of the petitioner, Raj Kumar alias Sethi, had skipped from the house from the back door, whereas petitioner had thrown something towards the chamber of

water drainage of the bathroom located at the corner of the courtyard, but the same, instead of chamber, fell near the wall at a corner. The substance thrown by the petitioner, on verification through detection kit, was found to be heroin, which, on weighing, was found to be 6.12 grams. Following the procedure, prescribed under law, the said substance was taken in possession and petitioner was arrested and since then, after remaining in police custody, the petitioner is in judicial custody.

3. Brother of the petitioner had also applied for anticipatory bail but his petition was rejected and now he has surrendered before the police and is in custody. From his house huge quantity of Tramadol Hydrochloride capsules has been recovered.

4. It is submitted on behalf of the petitioner that the petitioner is behind the bars since about four months and quantity of heroin, alleged to have been recovered from the petitioner, is 6.12 grams which is slightly more than the small quantity of 5 grams prescribed under the law.

5. Learned counsel for the petitioner has further submitted that the quantity recovered is slightly more than small quantity and that petitioner is a woman and she is in custody since 3.9.2020 and, therefore, keeping in view the provisions of Section 437 Cr.P.C., petitioner deserves to be enlarged on bail.

6. It is also submitted on behalf of the petitioner that the petitioner is ready to furnish local surety and she undertakes to abide by all the conditions that may be imposed by the Court for enlarging her on bail.

7. Section 437 Cr.P.C. contains provisions to treat a person under the age of 16 years or a woman or sick or infirm person in a different manner than others and empowers the Court to release such person on bail in those cases also wherein, in normal circumstances, others may not be released.

8. Keeping in view the entire facts and circumstances, without commenting on merits of the case, at this stage, I am of the opinion that no fruitful purpose is going to be served by keeping the petitioner behind the bars. Accordingly, the petitioner is ordered to be enlarged on bail on her furnishing personal bond in the sum of ₹50,000/- with one local surety in the like amount, as undertaken by her, to the satisfaction of the trial Court, within two weeks from today, subject to the following conditions:

(i) That the petitioner shall make herself available during investigation, as well as the trial on each and every date as and when required, as per law;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to Court or to any police officer or tamper with the evidence. She shall not, in any manner, try to overawe

or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the trial;

(iv) that the petitioner shall not commit the offence similar to the offence of which she is accused or suspected;

(v) that the petitioner shall not misuse her liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that he shall keep on informing about the change in address, landline number and/or mobile number, if any, for her availability to Police and/or during trial.

(viii) The petitioner shall not leave India without leave of the Court.

9. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the accused-petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice.

10. In case the petitioner violates any or the conditions imposed upon her, her bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

11. Learned trial Court is directed to comply with the directions issued by the High Court, vide

communication No. HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

12. Observations made hereinabove shall not affect the merits of the case in any manner and are strictly confined for the disposal of the present bail application.

13. Present petition stands disposed of.

The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, they may verify the order from the High Court website or otherwise.

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(Vivek Singh Thakur)
December 24, 2020(sd) Judge.